



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter Of: Tanglewilde Management Group, Inc.

File: B-240821

Date: September 19, 1990

Scott D. Reamer for the protester.

S. Lane Tucker, Esq., General Services Administration, for the agency.

Behn Miller, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging location requirement in solicitation for lease of office space which is not filed before the closing date for receipt of proposals is untimely and not for consideration on the merits.

DECISION

Tanglewilde Management Group, Inc. protests the rejection of its offer under solicitation for offers (SFO) No. R7-133-89, issued by the General Services Administration (GSA) for the lease of office space in Houston, Texas. Specifically, Tanglewilde protests the location requirement set forth in the solicitation.

We dismiss the protest.

The SFO, as amended, was issued on April 30, 1990 for a minimum of 15,015 to a maximum of 15,805 square feet of usable office space and 6 parking spaces for the Social Security Administration (SSA) District Office in Houston.^{1/} The SFO required all offered sites to fall within a specified commercial area; the street boundaries for this area were clearly set forth in the SFO as follows:

^{1/} GSA first issued this SFO in August 1989; however, because no offers were received, the agency revised and reissued the SFO on April 11. Subsequently, the delineated area was again revised and the instant SFO was issued, as amended, on April 30.

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"Space must be located in an area bounded on the East by Kirby Drive, south on Kirby to Bissonet, west on Bissonet to Wesleyan, south on Wesleyan to Bellaire, west on Bellaire to Loop 610, south on Loop 610 to Brasswood. Bounded on the South by N. Brasswood, west to South Rice; Bounded on the West by South Rice, north to Elm, west to Hillcroft, north on Hillcroft to Richmond. Bounded on the North by Richmond Ave., east to South Post Oak, north on South Post Oak to Westheimer, east on Westheimer to Kirby Drive."

On May 3, the agency sent Tanglewilde a copy of the SFO; in a letter accompanying the SFO, the agency also informed Tanglewilde that initial offers were due May 15 and that a market survey--for purposes of determining the acceptability of a potential leasing site--would be conducted during the week of May 7.

On May 8, representatives of Tanglewilde met with the agency's realty specialist at Tanglewilde's proposed leasing site. According to the agency, during this visit, Tanglewilde was informed by the realty specialist that Tanglewilde's proposed leasing site was outside the SFO's delineated location area and therefore was not eligible for consideration. In response, Tanglewilde asked the realty specialist to consider expanding the SFO's location boundaries; Tanglewilde also submitted an offer for this site dated April 11.

On May 14, Tanglewilde telephoned the realty specialist to discuss its offer and find out whether the agency was going to expand the perimeter of the leasing site. When the realty specialist informed Tanglewilde that the borders would not be changed, and that Tanglewilde's offer could not be considered, Tanglewilde told the realty specialist that it would protest this decision.

On June 1, Tanglewilde filed a protest with the agency, essentially arguing that the agency should have considered its offer since the offered leasing site was "located 5 minutes from the existing site" specified in the SFO. By letter dated July 27, GSA denied Tanglewilde's protest. Our Office then received a protest from Tanglewilde on August 16.

In its protest, Tanglewilde asserts that its offer should be considered by GSA because except for being located two blocks outside of the SFO's delineated area, Tanglewilde's

site meets all the SFO's terms; in essence, Tanglewilde is challenging the SFO's location requirement.

In order to be timely, a protest based on alleged improprieties in a solicitation which are apparent from its face must be filed with the contracting agency or our Office prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1990); 120 Church Street Assoc., B-232139.3, Mar. 7, 1989, 89-1 CPD ¶ 246. In this case, it was clear from the face of the solicitation that Tanglewilde's proposed leasing site was located two blocks outside of the SFO's delineated area. Nevertheless, Tanglewilde failed to protest the location requirement until after the May 15 closing date had passed. Accordingly, the protest is untimely.

As noted above, Tanglewilde initially filed a protest with GSA on June 1. Our Office received an information copy of the agency-level protest on June 18. By letter dated June 19, we acknowledged receipt of the information copy and referred Tanglewilde to our regulations, 4 C.F.R. § 21.2(a)(3), which provide that any protest to our Office after an initial agency-level protest must be filed within 10 days after adverse agency action on the protest. In reliance on this letter, Tanglewilde maintains that its protest to our Office is timely because it was filed within 10 days of the protester's receipt of GSA's decision denying its agency-level protest. As our regulations and our June 19 letter to Tanglewilde state, protests to our Office will be considered if filed within 10 days after adverse action on an agency-level protest, provided that the initial protest to the agency was filed in a timely manner. Since Tanglewilde did not file its protest with GSA until June 1, well after the May 15 closing date, that protest was untimely; accordingly, Tanglewilde's subsequent protest to our Office was untimely as well. See Ross Bicycles, Inc., B-217179; B-217547, June 26, 1985, 85-1 CPD ¶ 722.

The protest is dismissed.

Christine S. Melody
Christine S. Melody
Assistant General Counsel